



DEPARTMENT OF THE TREASURY

31 CFR Part 16

Program Fraud Civil Remedies

AGENCY: Departmental Offices, Treasury.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking would update the definition of “investigating official” in the Department’s Program Fraud regulations. The definition would be revised to include inspectors general that have been established since the Program Fraud regulations were implemented.

DATES: Comment due date: [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Please submit comments electronically through the Federal eRulemaking Portal: <https://www.regulations.gov>. Comments can be mailed to: Office of the General Counsel, General Law, Ethics & Regulation, 1500 Pennsylvania Avenue, NW, Washington DC 20220, ATTN: Program Fraud Proposed Rule. Because postal mail may be subject to processing delay, it is recommended that comments be submitted electronically.

In general, comments received will be posted on <https://www.regulations.gov> without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Brian Sonfield, Assistant General Counsel for General Law, Ethics & Regulation at (202) 622-9804.

SUPPLEMENTARY INFORMATION:

Background

The Department promulgated implementing regulations for the Program Fraud Civil Remedies Act of 1986 (Act) (31 U.S.C. 3801 through 3812) on September 17, 1987 (52 FR 35071). The Act generally provides that any person who knowingly submits a false claim or statement to the Federal Government may be liable for an administrative civil penalty for each false claim or statement, and, in certain cases, to an assessment equal to double the amount falsely claimed.

The Act vests authority to investigate allegations of liability under its provisions in an agency's investigating official. Based upon the results of an investigation, the agency reviewing official determines, with the concurrence of the Attorney General, whether to refer the matter to a presiding officer for an administrative hearing. Any penalty or assessment imposed under the Act may be collected by the Attorney General, through the filing of a civil action, or by offsetting amounts other than tax refunds, owed the particular party by the federal government.

The Act grants agency investigating officials authority to require by subpoena the production of documentary evidence which is "not otherwise reasonably available." If the case proceeds to hearing, the presiding officer may require the attendance and testimony of witnesses as well as the production of documentary evidence.

The Department of the Treasury adopted implementing regulations at 31 CFR part 16, which designated the Department's Assistant Secretary for Management as the authority head, designated the Department's Inspector General as the investigating official, and assigned the role of reviewing official to the General Counsel or designee.

This Proposed Rule

This proposed rule would revise the definition of investigating official in § 16.2. Since the regulations were promulgated in 1987, three inspectors general have been established including the Treasury Inspector General for Tax Administration (See Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, 112 Stat. 685), the Special Inspector General for the Troubled Asset Relief Program (See Emergency Economic Stabilization Act of

2008, Pub. L. 110-343, 122 Stat. 3765), and the Special Inspector General for Pandemic Recovery (See Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, 134 Stat. 281). The proposed revision would define investigating official as any Inspector General, including any Special Inspector General, with investigatory authority over programs of the Department of the Treasury.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., requires agencies to prepare an initial regulatory flexibility analysis (IRFA) to determine the economic impact of the rule on small entities. A small entity is defined as either a small business, a small organization, or a small governmental jurisdiction; an individual is not a small entity. Section 605(b) of the RFA allows an agency to prepare a certification in lieu of an IRFA if the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to 5 U.S.C. 605(b), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The proposed rule is limited to updating the definition of investigating official for program fraud investigations in order to reflect current law.

Accordingly, this rule, if finalized, will have no direct impacts on small entities.

Notwithstanding this certification, the Department invites comments on the impact this rule would have on small entities.

Regulatory Planning and Review

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a “significant regulatory action” under Executive Order 12866.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a rule that includes any federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This regulation does not include any federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

Federalism

Executive Order 13132 (titled Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law, within the meaning of the Executive order.

List of Subjects in 31 CFR Part 16

Administrative practice and procedure, Fraud, Investigations, Organizations and functions (Government agencies), Penalties.

For the reasons stated in the preamble, the Department of the Treasury proposes to amend 31 CFR part 16 as follows:

PART 16 - REGULATIONS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

1. The authority citation for part 16 continues to read as follows:

Authority: 31 U.S.C. 3801-3812.

2. In § 16.2, revise the definition of “Investigating official” to read as follows:

§ 16.2 Definitions.

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Investigating official means any Inspector General, including any Special Inspector General, with investigatory authority over programs of the Department of the Treasury, as applicable.

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Laurie Schaffer,
Acting General Counsel.

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